



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097121,725	07/24/98	VOISIN E	V98-1054

IM62/0519  
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EXAMINER  
BECKER, D

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 05/19/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/121,725

Applicant(s)

Voisin

Examiner

Drew Becker

Group Art Unit

1761

☒ Responsive to communication(s) filed on Jan 10, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 3, 4, 6, and 7 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 3, 4, 6, and 7 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Prosecution on the merits of this application is reopened on claims 3-4 and 6-7 (which were renumbered as claim 1-2 and 3-4) considered unpatentable for the reasons indicated below:  
  
JP 4356156A found in applicant's Information Disclosure Statement filed January 10, 2000 teaches a method of pressure treating shellfish making use of the same pressure and time limitations as the claimed method.
2. Applicant is advised that the Notice of Allowance mailed December 16, 1999 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a Deposit Account.
3. The indicated allowability of claims 3-4 and 6-7 is withdrawn in view of the newly discovered reference(s) to JP 4356156A. Rejections based on the newly cited reference(s) follow.

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***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 4356156A.

JP 4356156A teach a method of treating shellfish comprising exposing raw oysters

(paragraph 0005) contained in plastic bags filled with sea-water (paragraph 0010) to hydrostatic pressures of 14,615-44,087 psi for 0.5-10 minutes at ambient temperatures (paragraph 0006).

Although JP 4356156A do not recite any effect upon pathogenic Vibriones bacteria, the method steps utilized in the reference are the same as those instantly claimed, and thus one of ordinary skill in the art would have expected the same results. The claimed characteristic of eliminating pathogenic Vibriones bacteria is considered an inherent property and result of the referenced method, and not unique to the instant invention, absent any clear and convincing evidence or arguments to the contrary.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 4356156A.

JP 4356156A teach a method of treating shellfish by providing a pressure vessel

(paragraph 0010) and exposing raw oysters (paragraph 0005) contained in plastic bags filled with sea-water (paragraph 0010) to hydrostatic pressures of 14,615-44,087 psi for 0.5-10 minutes at ambient temperatures (paragraph 0006). Although JP 4356156A do not recite any effect upon pathogenic Vibriones bacteria, the method steps utilized in the reference are the same as those instantly claimed, and thus one of ordinary skill in the art would have expected the same results. The claimed characteristic of eliminating pathogenic Vibriones bacteria is considered an inherent property and result of the referenced method, and not unique to the instant invention, absent any clear and convincing evidence or arguments to the contrary. Although not specifically recited, it would have been obvious to one of ordinary skill in the art to refrigerate the pressure treated oysters of JP 4356156A since cooling to refrigeration temperatures is a commonly used method of preserving raw food products.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hirsch [Pat. No. 6,033,701] teach a method of preserving shellfish (column 14, line 17) by the use of high pressure treatments (column 15, lines 1-31).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner

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can normally be reached on Monday-Thursday from 7:00 am to 4:00 pm and every other Friday from 7:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Drew Becker

April 17, 2000



KEITH HENDRICKS  
PRIMARY EXAMINER